

#4

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

12/21

4:16pm

AKAMAI TECHNOLOGIES, INC.,  
And  
MASSACHUSETTS INSTITUTE OF  
TECHNOLOGY,

Plaintiffs,

vs.  
DIGITAL ISLAND, INC.,  
and  
KINETECH, INC.,

Defendants.

No. 00-cv-11851-RWZ

DIGITAL ISLAND, INC.  
and  
KINETECH, INC.,

Plaintiffs,

vs.  
AKAMAI TECHNOLOGIES, INC.,

Defendant.

No. 01-cv-11007-RWZ

**Verdict on Special Questions to the Jury.**

**I. INFRINGEMENT**

**Burden of proof - Preponderance of the Evidence**

Akamai and MIT's '703 Patent

patent: 1. Does Digital Island's Footprint 2.0 system infringe the following claims of the '703

Claim 1:	Yes <u>✓</u>	No _____
Claim 3:	Yes <u>✓</u>	No _____
Claim 5:	Yes <u>✓</u>	No _____
Claim 9:	Yes <u>✓</u>	No _____
Claim 17:	Yes <u>✓</u>	No _____
Claim 18:	Yes <u>✓</u>	No _____
Claim 22:	Yes <u>✓</u>	No _____

232

Akamai's '030 Patent

2. Does Digital Island's Footprint 2.0 system infringe the following claims of the '030 patent:

Claim 49: Yes \_\_\_\_\_ No ✓

Claim 61: Yes \_\_\_\_\_ No ✓

Digital Island and Kinetech's '791 Patent

3. Does Akamai's FreeFlow system infringe the following claims of the '791 patent:

a. Claim 30: Yes \_\_\_\_\_ No ✓

b. Claim 31: Yes \_\_\_\_\_ No ✓

c. Claim 33: Yes \_\_\_\_\_ No ✓

d. Claim 41: Yes \_\_\_\_\_ No ✓

**II. VALIDITY****Burden of Proof - Clear and Convincing Evidence**Akamai and MIT's '703 Patent

4. Are the following claims of the '703 patent invalid as anticipated by Digital Island's '598 patent:

a. Claim 1: Yes \_\_\_\_\_ No ✓

b. Claim 3: Yes \_\_\_\_\_ No ✓

c. Claim 5: Yes \_\_\_\_\_ No ✓

d. Claim 9: Yes \_\_\_\_\_ No ✓

e. Claim 17: Yes ✓ \_\_\_\_\_ No \_\_\_\_\_

f. Claim 18: Yes ✓ \_\_\_\_\_ No \_\_\_\_\_

g. Claim 22: Yes ✓ \_\_\_\_\_ No \_\_\_\_\_

5. Are the following claims of the '703 patent invalid as obvious in view of Digital Island's '598

Dec 97

patent and Cisco's Distributed Director and/or Cisco's '160 patent?

a.	Claim 1:	Yes _____	No <u>✓</u>
b.	Claim 3:	Yes _____	No <u>✓</u>
c.	Claim 5:	Yes _____	No <u>✓</u>
d.	Claim 9:	Yes _____	No <u>✓</u>
e.	Claim 17:	Yes <u>✓</u>	No <u>✓</u>
f.	Claim 18:	Yes <u>✓</u>	No _____
g.	Claim 22:	Yes <u>✓</u>	No _____

Akamai's '030 Patent

6. Are the following claims of the '030 patent invalid as being obvious in view of these listed references, individually or collectively?

- i) Caccavale patent (U.S. Patent No. 5,459,837);
- ii) article entitled "Dynamic Server Selection in the Internet" by Mark E. Crovella, et al.;
- iii) article entitled "Server-initiated Document Dissemination for the WWW" by Bestavros et al.;
- iv) article entitled "Hierarchical Internet Object Cache" by Chankhunthod et al.;
- v) article entitled "Locating Nearby Copies of Replicated Internet Servers" by Guyton et al.:

Claim 49:	Yes _____	No <u>✓</u>
Claim 61:	Yes _____	No <u>✓</u>

7. Are the following claims of the '791 patent invalid as anticipated by the disclosures in a publication entitled "The Design and Implementation of Tripwire: A File System Integrity Checker" by Gene Kim and Eugene Spafford.

Claim 30:	Yes _____	No <u>✓</u> _____
Claim 31:	Yes _____	No <u>✓</u> _____
Claim 33:	Yes _____	No <u>✓</u> _____
Claim 41:	Yes _____	No <u>✓</u> _____

8. Are the following claims of the '791 patent invalid as anticipated by the disclosures in a publication entitled Experiences with Tripwire: Using Integrity Checkers for Intrusion Detection" by Gene Kim and Eugene Spafford.

Claim 30:	Yes _____	No <u>✓</u> _____
Claim 31:	Yes _____	No <u>✓</u> _____
Claim 33:	Yes _____	No <u>✓</u> _____
Claim 41:	Yes _____	No <u>✓</u> _____

9. Are the following claims of the '791 patent invalid as anticipated by the publication entitled "Distributed Systems Concepts and Design" by Coulouris, Dollimore and Kindberg

Claim 30:	Yes _____	No <u>✓</u> _____
Claim 31:	Yes _____	No <u>✓</u> _____
Claim 33:	Yes _____	No <u>✓</u> _____
Claim 41:	Yes _____	No <u>✓</u> _____

10. Are the following claims of the '791 patent invalid as anticipated by the publication entitled

"The Appollo Domain Distributed File System from "Distributed Operating Systems: Theory and Practice by Paker, Banatra and Bozyigit.

Claim 30:	Yes _____	No <u>✓</u>
Claim 31:	Yes _____	No <u>✓</u>
Claim 33:	Yes _____	No <u>✓</u>
Claim 41:	Yes _____	No <u>✓</u>

11. Are the following claims of the '791 patent invalid as anticipated by the Kilburg e-mails.

Claim 30:	Yes _____	No <u>✓</u>
Claim 31:	Yes _____	No <u>✓</u>
Claim 33:	Yes _____	No <u>✓</u>
Claim 41:	Yes _____	No <u>✓</u>

12. Are the following claims of the '791 patent invalid as anticipated by the publication entitled

RFC 1321 - "The MD5 Message Digest Algorithm"

Claim 30:	Yes _____	No <u>✓</u>
Claim 31:	Yes _____	No <u>✓</u>
Claim 33:	Yes _____	No <u>✓</u>
Claim 41:	Yes _____	No <u>✓</u>

#4

13. Are the following claims of the '791 patent invalid as obvious in view of these listed

references, individually or collectively:

- i) publication entitled "The Design and Implementation of Tripwire: a File System Integrity Checker," by Gene Kim and Eugene Spafford;
- ii) publication entitled "Experiences with Tripwire: Using Integrity Checkers for Intrusion Detection" by Gene Kim and Eugene Spafford;
- iii) publication entitled "Distributed Systems Concepts and Design" by Coulouris, Dollimore and Kindberg;
- iv) publication entitled "The Appollo Domain Distributed File System from "Distributed Operating Systems: Theory and Practice by Paker, Banatra and Bozyigit;
- v) Kilburg e-mails;
- vi) publication entitled RFC 1321 - "The MD5 Message Digest Algorithm"

Claim 30:	Yes _____	No <u>          </u> ✓
Claim 31:	Yes _____	No <u>          </u> ✓
Claim 33:	Yes _____	No <u>          </u> ✓
Claim 41:	Yes _____	No <u>          </u> ✓

### III. WILLFUL INFRINGEMENT

#### Burden of Proof - Clear and Convincing Evidence

If you answered YES to Questions 1,2, or 3, please answer the corresponding question below.

#### Akamai and MIT's '703 Patent

14. Did Digital Island willfully infringe the '703 patent?

Yes \_\_\_\_\_ No            ✓

#4

Akamai's '030 Patent

15. Did Digital Island willfully infringe the '030 patent?

Yes \_\_\_\_\_

No ✓

Digital Island and Kinetech's '791 Patent

16. Did Akamai willfully infringe the '791 patent?

Yes \_\_\_\_\_

No ✓

12/21/01  
DATE

[Signature]  
FOREPERSON